

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/880,409	06/13/2001	K. Gifford Goodhue JR.	GOOD:015CIP2

23369
HOWREY SIMON ARNOLD & WHITE LLP
750 BERING DRIVE
HOUSTON, TX 77057

CONFIRMATION NO. 8567

FORMALITIES LETTER



OC000000006274299

Date Mailed: 07/09/2001

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is missing.
A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.
- **The balance due by applicant is \$ 130.**

*A copy of this notice **MUST** be returned with the reply.*

25

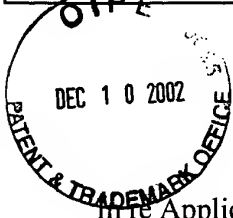
Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE



750 BERING DRIVE
HOUSTON, TX 77057-2198
PHONE 713.787.1400
FAX 713.787.1440
A LIMITED LIABILITY PARTNERSHIP



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: K. Gifford Goodhue, Jr.;
Max M. Holmes; Clinton Scott Norman; John M.
Wilkerson, III;

Serial No.: 09/880,409

Confirmation No.: 8567

Filed: June 13, 2001

For: COMPOSITION AND METHOD FOR A DUAL-
FUNCTION SOIL-GROUTING EXCAVATING OR
BORING FLUID

Group Art Unit: 1712

Examiner: Not Assigned

Atty. Dkt. No.: 11084.0015.CNUS02
GOOD:015--2

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DEC 13 2002

OFFICE OF PETITIONS

REQUEST FOR RECONSIDERATION OF
PETITION UNDER 37 C.F.R. § 1.47(a)

Commissioner for Patents
Washington, D.C. 20231

EXPRESS MAIL MAILING LABEL

EL830940729US

NUMBER

DATE OF DEPOSIT 10 December, 2002

I hereby certify that this paper or fee is being deposited with the United States Postal Service
"EXPRESS MAIL POST OFFICE TO ADDRESSEE" service under 37 C.F.R. 1.10 on the date
indicated above and is addressed to: Commissioner for Patents, Washington D.C. 20231.

Barbi Sofia
Signature

A Notification of Missing Requirements under 35 U.S.C. §371 for the above-captioned application was mailed on August 3, 2000, requiring the oath or declaration of the inventors be furnished with the associated surcharge. A Petition Under 37 C.F.R. § 1.47(b) was filed on February 8, 2002 and was treated by the Office as a Petition under 37 C.F.R. § 1.47(a) (Exhibit A) A decision on the February 8, 2002 petition was mailed on June 10, 2002 dismissing the



Serial No.: 09/880,409
Confirmation No.: 8567
Applicant: GOODHUE et al.
Atty. Ref.: 11084.0015.CPUS00

petition. (Exhibit B) Applicants request the reconsideration of the previously filed petition in view of the following facts and circumstances.

The inventor that is the subject of the petition, Mr. Max M. Holmes, was an employee of the Assignee, K B Technologies Ltd. at the time the invention was made.

Mr. Holmes is no longer employed by K B Technologies Ltd.

Mr. Holmes is obligated under the terms of his employment contract with K B Technologies Ltd. to assign the invention to K B Technologies Ltd. (Exhibit C)

Mr. Holmes, by virtue of a previously executed and recorded assignment (Exhibit D) has already assigned and transferred his entire right, title and interest for the United States and all foreign countries in and to any and all improvements which are disclosed in the parent patent application no. 09/023,150, now U.S. Patent No. 6,248,697. This assignment of rights includes all divisional, continuing, substitute, renewal, reissue and all other applications for patent which have been or shall be filed in the United States and all foreign countries on any of such improvements; all original and reissued patents which have been or shall be issued in the United States and all foreign countries on such improvements; and specifically including the right to file foreign applications under the provisions of any convention or treaty and claim priority based on such application in the United States.

Attempts to secure the inventors' execution of an inventor's declaration have resulted in the continued refusal of Mr. Holmes to sign the inventor declaration. The following facts and documents are submitted in support of this statement:

1. On September 5, 2002 a letter was mailed via Certified Mail –Return Receipt Requested including both a declaration document and a copy of the patent application to Mr. Max Holmes. (Exhibit E) Included in the September 5, 2002 letter is a request that Mr. Holmes review the patent application and execute the declaration document in compliance with the terms and obligations of Mr. Holmes’ employment agreement.
2. On September 30, 2002, a letter was received from Mr. Michael E. Alexander, the legal representative of Mr. Max Holmes, confirming the receipt of the September 5, 2002 letter by Mr. Holmes. (Exhibit F)
3. On October 24, 2002, a letter was received from Mr. Alexander denying the validity and enforceability of the employment agreement and denying any obligation on behalf of Mr. Holmes regarding the patent. (Exhibit G) The October 24, 2002 letter contains a conditioned counter-proposal to sign the inventors declaration document upon the granting of a non-exclusive license to Mr. Holmes under the parent patent application no. 09/023,150, (now U.S. Patent No. 6,248,697) and any patent resulting from the present application.
4. On November 7, 2002, a letter was mailed via Certified Mail –Return Receipt Requested including both the a declaration document and a copy of the patent application to Mr. Alexander. (Exhibit H) Included in the November 7, 2002 letter is a request that Mr. Holmes review the patent application and execute the inventor’s declaration document in compliance with the terms and obligations of Mr. Holmes employment agreement.

5. On November 27, 2002, a letter was received from Mr. Alexander including a denial by Mr. Holmes of the validity and enforceability of the employment agreement and denying any obligation regarding the execution of the inventor's declaration. (Exhibit I) The November 27, 2002 letter also states that Mr. Holmes has reviewed the documents provided to him in the November 7, 2002 letter (i.e. the inventor's declaration and copy of patent application no. 09/880,409) and includes an admission by Mr. Holmes that he made no contribution to the new subject matter contained in patent application no. 09/880,409, thus allegedly eliminating the need for Mr. Holmes' signature on the documents.
6. Attached is a copy of the Inventor's Declaration and Power of Attorney previously executed by Mr. Max Holmes and filed in the parent patent application no. 09/023,150, (now U.S. Patent No. 6,248,697). (Exhibit J) This document is submitted in support of the fact that at the time of its execution and during the period of his employment, Mr. Holmes was under and complied with his obligation to sign such documents required for the prosecution of patent applications on inventions conceived during his employment in accordance with the terms of his employment agreement. Only after the termination of his employment has Mr. Holmes refused, or proposed unfounded and additional conditions on K B Technologies, to sign such documents, which is in breach of his obligation.
7. The Inventor's Declaration and Power of Attorney previously executed by Mr. Max Holmes and filed in the parent patent application no. 09/023,150, (now U.S. Patent No.

6,248,697) (Exhibit J) is also submitted in support of the argument that Mr. Holmes has previously executed an inventor's declaration with regard to the subject matter contained in the parent patent application no. 09/023,150, (now U.S. Patent No. 6,248,697). As noted above, Mr Holmes has denied any inventive contribution to the new matter introduced into the present application (application no. 09/880,409). Therefore, it is requested that to the extent required, Mr. Holmes' prior declaration be accepted in the present application and that any new subject matter introduced by virtue of the continuation-in-part, no such inventor's declaration is required of Mr. Holmes by virtue of his admission that he made no contribution to such subject matter.

A failure to timely respond to the Notification of Missing Requirements under 35 U.S.C. 371 will result in abandonment of the U.S. National stage application, causing irreparable damage to K B Technologies Ltd.

Therefore, K B Technologies Ltd. hereby petitions under 37 C.F.R. 1.47(a) and 35 U.S.C. 118 to execute the declaration for the above-identified application on behalf of and as agent for the inventor.

The following documents previously submitted are again filed in support of this petition:

1. Declaration of inventorship by K B Technologies Ltd. made on behalf of Mr. Holmes (Exhibit K); and
2. Statement establishing the proprietary interest of KB Technologies. (Exhibit L).

The following document is also submitted in support of this petition:



Serial No.: 09/880,409
Confirmation No.: 8567
Applicant: GOODHUE et al.
Atty. Ref.: 11084.0015.CPUS00

1. Declaration of Mr. Carter White in support of the facts and documents regarding the continued refusal of Mr. Holmes to sign the inventor's declaration. (Exhibit M)

The last known addresses of the non-signing inventor is as follows:

Max M. Holmes,
31334 Bearing Star Lane
Tomball, TX 77375
United States of America

The Petition Fee of \$130.00 is to be charged against the following deposit account:
Howrey Simon Arnold & White Deposit Account No. 01-2508/GOOD:015. Should any fee under 37 C.F.R. §§ 1.16 to 1.21 be deemed necessary for any reason relating to this document, the Assistant Commissioner is hereby authorized to deduct said fee from Howrey Simon Arnold & White Deposit Account No. 01-2508/GOOD:015.

Applicant requests for any extension of time that may be deemed necessary to further the prosecution of this application.

Applicant's representative authorizes the Commissioner to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 01-2508, referencing Order No. GOOD:015.

In order to facilitate the resolution of any issues or questions presented by this paper, Applicant respectfully requests that the Examiner directly contact the undersigned by phone to further the discussion.

The undersigned attorney of record expressly recognizes the applicability of 37 C.F.R. 10.18 (b) and (c) and the duties and obligations contained therein to this document.



Serial No.: 09/880,409
Confirmation No.: 8567
Applicant: GOODHUE et al.
Atty. Ref.: 11084.0015.CPUS00

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Carter J. White".

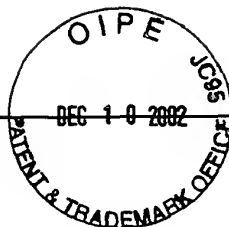
Carter J. White

Patent Attorney

Reg. No. 41374

Tel. 713 268 1372

Date: Dec 10 '02



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: GOODHUE, Jr., K. Gifford;
et al.

Serial No.: 09/880,409

Confirmation No.:

Filed: June 13, 2001

For:

Group Art Unit: Not Known

Examiner: Not Known

Atty. Dkt. No.: 11084.0015.CPUS00
GOOD015

**RESPONSE TO NOTICE OF MISSING PARTS
FILING DATE GRANTED**

BOX MISSING PARTS
Commissioner for Patents
Washington, D.C. 20231

EXPRESS MAIL MAILING LABEL	
EL830940644US	
NUMBER	
DATE OF DEPOSIT	8 Feb 2002
<small>I hereby certify that this paper or fee is being deposited with the United States Postal Service "EXPRESS MAIL POST OFFICE TO ADDRESSEE" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to: Commissioner for Patents, Washington D.C. 20231.</small>	
Signature	<i>Amy K. Gifford</i>

In response to the Notice to File Missing Parts of Application – Filing date Granted under 37 CFR § 1.53(d), dated July 9, 2001, the following are enclosed:

- ☒ Part 2 of FORM PTO-1533 Notice to File Missing Parts of Application;
- ☒ Declaration and Power of Attorney executed by the inventors;
- ☐ Petition under 37 CFR 1.47 based on the refusal of Mr. Max M. Holmes to sign.
- ☐ A Declaration Claiming Small Entity Status executed on behalf of ;
- ☒ A Request for Extension of Time of 5 months to and including February 9, 2002.
- ☒ The Commissioner is authorized to charge the following fees as indicated on enclosed FORM 2038

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Serial No.: 09/880,409

Confirmation No.:

Applicant: GOODHUE, Jr., K. Gifford; et al.

Atty. Ref.: 11084.0015.CPUS00

☒ surcharge for late filing (\$130.00);

☐ the recordation fee for the enclosed Assignment (\$);

CALCULATION OF FILING FEE: The filing fee was calculated as follows:

			Other than Small Entity	
Total Claims	- 20	=	x \$ 18.00	= \$
Independent Claims	- 3	= 0	x \$ 80.00	= \$
First Multiply Dependent Claim Presented			+ \$ 270.00	= \$
Basic Fee			+ \$ 710.00	= \$
			TOTAL = \$	

The Commissioner is authorized to charge the above filing fee and any additional fees which may be required, or credit any overpayment, to Deposit Account No. 01-2508, Order No. GOOD015. An additional copy of this sheet is enclosed for this purpose.

Please associate this application with and address all correspondence to:

Customer Number 23369,

HOWREY SIMON ARNOLD & WHITE LLP
750 Bering Drive
Houston, Texas 77057

Please address all telephone calls to: Carter J. White, Patent Attorney, at 713 268 1372.

Please address all e-mail to: whitec@howrey.com.

Applicant requests for any extension of time that may be deemed necessary to further the prosecution of this application.

Applicant's representative authorizes the Commissioner to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 01-2508, referencing Order No. GOOD:015.



Serial No.: 09/880,409

Confirmation No.:

Applicant: GOODHUE, Jr. , K. Gifford; et al.

Atty. Ref.: 11084.0015.CPUS00

In order to facilitate the resolution of any issues or questions presented by this paper, Applicant respectfully requests that the Examiner directly contact the undersigned by phone to further the discussion.

In order to promote the prosecution of this application, the Examiner is authorized to contact the undersigned by electronic mail. Please address all e-mail to: whitec@howrey.com

Respectfully submitted,

Carter J. White

Patent Attorney

Reg. No. 41374

Tel. 713 268 1372

Date: 8 Feb 02



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Certified Article Number

7160 3901 9844 7076 5915

SENDERS RECORD

September 5, 2002

Writer's Direct Dial:
(713) 268-1372

FILE: 11084.0015.CNUS02
GOOD:015-2

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Max M. Holmes
31334 Bearing Star Lane,
Tomball, TX 77375

RE: *U.S. Patent Application Entitled: "Composition And Method For Dual Function
Soil Grouting Excavating Or Boring Fluid"*
Application No.: 09/880,409; Filed: June 13, 2001

Dear Mr. Holmes:

You are named as a co-inventor on the above referenced application for U.S. letters patent. Your intellectual contribution to at least a portion of the subject matter claimed in this application occurred during the course of your employment by KB Technologies (KB). In accordance with the terms of your employment agreement (copy enclosed), you are obligated to execute all papers necessary for KB to obtain such letters patent.

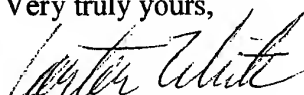
Enclosed for your review and signature please find the following:

- A copy of U.S. patent application no. 09/880,409 as filed with the U.S. Patent and Trademark Office;
- A Declaration and Power of Attorney document

Please sign and date the enclosed document where indicated and return the original signed document, including all attachments, to me for filing with the U.S. Patent and Trademark Office. For your convenience I have included a pre-addressed, postage paid return envelope.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,


Carter J. White, Ph.D.
Patent Attorney

Enc.

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FAX 713.787.1440
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Writer's Direct Dial:
(713) 268-1372

August 10, 2001

FILE: 11084.0015.CNUS02
GOOD:015-2

Mr. K. Gifford Goodhue
KB TECHNOLOGIES, INC.
3648 FM 1960 West, Suite 107
Houston, Texas 77068

RE: *U.S. Patent Application Entitled: "Composition And Method For Dual Function
Soil Grouting Excavating Or Boring Fluid"*

Dear Gif:

We have now received Notice to File Missing Parts – Filing Date Granted from the Patent and Trademark Office, in the above referenced case. A copy is enclosed for your records.

In order to maintain the application, we must submit a properly signed Oath and Declaration document. I have enclosed such a document for your use. Please note that each of the inventors must sign this document and provide their residential address, citizenship and mailing address. I have also enclosed an assignment document for transferring the ownership of the application from the inventors to K-B. This document should be signed and notarized as indicated.

If you encounter any difficulty in obtaining the signatures of one or more of the inventors, please contact me. There are procedural actions that can be taken to avoid the abandonment of the application.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,

Carter J. White, Ph.D.
Patent Agent

CJW:bas
Enc.

cc: Stephen H. Cagle

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TELECOPIER:
(713) 652-2424

EIKENBURG & STILES

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

1900 One City Centre
1021 Main Street
HOUSTON, TEXAS 77002-6603

TELEPHONE:
(713) 652-2144

September 30, 2002

BY FACSIMILE (713) 787-1440

Carter J. White
Howrey Simon Arnold & White
750 Bering Drive
Houston, Texas 77057-2198

RE: U. S. Patent Application No. 09/880,409; Filed June 13, 2001

Dear Mr. White:

I represent Max Holmes, whom you wrote on September 5, 2002, concerning the referenced patent application.

I am in the process of reviewing the documents you sent Mr. Holmes and will have a response to you as soon as practicable.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael E. Alexander".

Michael E. Alexander

cc: Max Holmes (By Facsimile)

{12086 - 2:00005466.DOC}

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EIKENBURG & STILES

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

TELECOPIER:
(713) 652-2424

1900 One City Centre
1021 Main Street
HOUSTON, TEXAS 77002-6603

TELEPHONE:
(713) 652-2144

November 27, 2002

BY FACSIMILE (713) 787-1440
AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Carter J. White
Howrey Simon Arnold & White
750 Bering Drive
Houston, Texas 77057-2198

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DEC - 2 2002

HOWREY, SIMON, ARNOLD & WHITE

RE: U. S. Patent Application No. 09/880,409; Filed June 13, 2001

Dear Mr. White:

Max Holmes continues to maintain that the so-called employment agreement you sent with your correspondence is not an enforceable contract and that, therefore, he is not required to sign the Declaration and Power of Attorney in connection with the '409 Patent Application.

That being said, and having reviewed the documents you submitted to us (Declaration/Power of Attorney and the '409 Patent Application), Mr. Holmes agrees with the statement in your letter of November 7, 2002, that he in fact made no contribution to the new subject matter included and claimed in the '409 application. That eliminates the need for his signature on the documents you sent us.

Sincerely,


Michael E. Alexander

cc: Max Holmes

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A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

TELECOPIER:
(713) 652-2424

1900 One City Centre
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HOUSTON, TEXAS 77002-6603

TELEPHONE:
(713) 652-2144

October 24, 2002

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OCT 28 2002

HOWREY, SIMON, ARNOLD & WHITE

BY FACSIMILE (713) 787-1440

Carter J. White
Howrey Simon Arnold & White
750 Bering Drive
Houston, Texas 77057-2198

RE: U. S. Patent Application No. 09/880,409; Filed June 13, 2001

Dear Mr. White:

This is in response to your September 5, 2002, letter to Max Holmes regarding the above referenced patent application.

As you may be aware, the validity and enforceability of the employment agreement that you reference in your letter has been the subject of dispute between Mr. Holmes and KB Technologies. Mr. Holmes does not believe he is required to sign away any rights he has under this patent application. In the interest of harmony and joint interest, however, Mr. Holmes is willing to cooperate in this continuation-in-part application under two conditions:

- In order to avoid any possible disputes between the parties, KB Technologies grants Mr. Holmes a non-exclusive license under United States Patent No. 6,248,697, dated June 19, 2001, and under the patent that may be issued as the result of United States Patent Application 09/880,409; and
- In connection with the continuation-in-part application, KB Technologies agrees to cite the following patents to the Patent & Trademark Office in an Information Disclosure Statement:

2,131, 338 (Vail); 4,009,755 (Sandiford); 5,072,791 (Whitebay)

I look forward to hearing from you.

Sincerely,


Michael E. Alexander

{12086 - 2:00005865.DOC}

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FAX 713.787.1440
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Certified Article Number

7160 3901 9844 9109 5954

SENDERS RECORD

Writer's Direct Dial:
(713) 878-1372

November 7, 2002

FILE: 11084.0015.CNUS02
GOOD:015—2

Mr. Michael E. Alexander
Eikenburg & Stiles
1900 One City Centre
1021 Main Street
Houston, TX 77002

RE: *U.S. Patent Application Entitled: "Composition And Method For Dual Function
Soil Grouting Excavating Or Boring Fluid"*
Application No.: 09/880,409; Filed: 06/13/2001

Dear Mr. Alexander:

This is in response to your October 24, 2002 letter regarding the above matter.

The documents forwarded to Mr. Holmes in our September 5, 2002 letter enclosed only a copy of Application No. 09/880,409 (the '409 application) for review by Mr. Holmes and a Declaration and Power of Attorney document for his signature.

As indicated in the documents sent to Mr. Holmes, the '409 application claims priority as a continuation-in-part of a previously filed patent application No. 09/023,150 that now is U.S. Patent No. 6,248,697 (the '150 parent patent application). Mr. Holmes was included as a co-inventor on the '150 parent patent application because what we thought at the time to be his contribution to the subject matter claimed in the '150 parent patent application. Because of a potential overlap in subject matter disclosed in the '150 parent patent application and the subject matter claimed in the '409 application, out of an abundance of caution, Mr. Holmes has been included as a co-inventor in the '409 application. Mr. Holmes is not believed to have made any contribution to any of the new subject matter included and claimed in the '409 application.

I have prepared and enclosed with this letter an Inventor's Declaration document accompanied by a copy of the '409 application for presentation to and execution by Mr. Holmes. A review of the enclosed Inventor's Declaration document will indicate that the purpose of the document is compliance with the requirements of 35 U.S.C. §111(a) for completion of the '409 application. This includes the filing of an inventor's oath or declaration complying with the requirements of 35 U.S.C. §115 and 35 U.S.C. § 25. For your convenience I have enclosed a copy of the applicable provisions of the U.S. Code.

RECEIVED

DEC 13 2002

OFFICE OF PETITIONS

Mr. Michael E. Alexander
November 7, 2002
Page 2

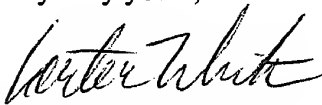
Execution of the Inventor's Declaration by Mr. Holmes does not change or affect the current status quo with regard to any ownership interests Mr. Holmes believes that he may have in the '409 application. Therefore, would you please present the Inventor's Declaration and attached copy of Application No. 09/880,409 to Mr. Holmes for review and signature in compliance with his obligations under his employment agreement with K.B. Technologies (copy enclosed). In the event that Mr. Holmes refuses to sign the Inventor's Declaration, would you please provide me with the reasons for his refusal.

With regard to Mr. Holmes' belief regarding any rights he may or may not have in the present invention, you should note that by virtue of a previously executed and recorded assignment, (copy enclosed) Mr. Holmes has already assigned and transferred his entire right, title and interest for the United States and all foreign countries in and to any and all improvements which are disclosed in the parent patent application No. 09/023,150. This assignment of rights includes all divisional, continuing, substitute, renewal, reissue and all other applications for patent which have been or shall be filed in the United States and all foreign countries on any of such improvements; all original and reissued patents which have been or shall be issued in the United States and all foreign countries on such improvements; and specifically including the right to file foreign applications under the provisions of any convention or treaty and claim priority based on such application in the United States.

Finally with regard to the references noted in your letter, please be aware that upon completion of the application, we intend to bring these documents and all other information material to the examination of the application, of which we are aware, to the attention of the Examiner in the form of an Information Disclosure Statement.

I look forward to hearing from you.

Very truly yours,



Carter J. White, Ph.D.
Patent Attorney

Enc.

cc: Stephen H. Cagle